RECORD, CASE No. 13,998.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 88.

THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

EDWARD M. BURNETT.

IN ERROR TO THE SEVENTEENTH JUDICIAL DISTRICT COURT OF THE STATE OF LOUISIANA IN AND FOR THE PARISH OF EAST BATON ROUGE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 29, 1893.

a STATE OF LOUISIANA,
Parish of East Baton Rouge.

17th Jud'l District Court.

E. M. BURNETT, Appellee,
vs.
LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, Appellant. } No. 1413.

T. J. Kernan, for appellant; K. A. Cross, for appellee.

1 *Petition.*

STATE OF LOUISIANA,
Parish of East Baton Rouge.

2d Justice Court.

E. M. BURNETT
vs.
LOUISVILLE, N. O. AND TEXAS R. R. Co. } No. 315.

Petition of K. A. Cross. Filed 2d day of Sept., '89.

To the hon. magistrate 2d ward court, East Baton Rouge, parish of Louisiana:

The petition of E. M. Burnett, of the said parish, respectfully represents that on or about the 13th day of August, 1889, the train run and operated by the Louisville, New Orleans and Texas railroad as a corporation under the laws of Louisiana, having its domicile in the parish of Orleans, in this State, whereof Richard T. Wilson is president, run over and killed a fine cow within the jurisdiction of your hon. court, belonging to petitioner, worth seventy-five dollars; that the — was owing to the culpable negligence of the employés of said company operating said train and *herein* defiance of a municipal regulation limiting the speed of train- within the city limits, and said company is therefore liable to petitioner for
2 the amount *for the amount* of said damage; wherefore he brings suit to pay for citation on said company by service on its president and after due proceeding for judgment for said amount and 5 % interest from the demand and for costs and general relief.

(Signed) By his att'y, K. A. CROSS.

Service Accepted.

Service accepted and citation waived; delays and objection to jurisdiction reserved.

August 30th, 1889.

(Signed) T. J. KERNAN,
Att'y for Defendant.

Minutes of Justice Court.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

2d Justice Court.

E. M. BURNETT
vs.
L., N. O. AND TEXAS R. R. Co. } No. 315.

E. M. Burnett claims of L., N. O. and Texas R. R. Co. the
3 sum of seventy-five dollars, with 5 % interest, for killing a cow in August, 1889. K. A. Cross, att'y for plaintiff; T. J. Kernan, att'y for defendant.

Service accepted and citation waived. Delay and objection to jurisdiction reserved by att'y for defence. Filed 2d day of Sept., 1889.

Defendants, through their counsel, T. J. Kernan, come into court and filed exception to jurisdiction of 2d justice court without pleading to the merits of the case. Filed 27th day of Sept., 1889.

This case fixed for hearing Friday, Oct. 4th, 1889, at 10 o'clock a. m.

Notice of trial issued to counsel, K. A. Cross, for plaintiff, and to T. J. Kernan, for defendants, 27th day of Sept., 1889.

Served the above notice on T. J. Kernan, att'y for defendant, and E. M. Burnett, plaintiff. Signed D. P. Gayle, P. C.

Citation issued the 1st day of October, 1889, to Dan. Con-
4 tini, a witness for plaintiff. Served the above on the 1st day of October, 1889. Signed D. P. Gayle, P. C.

Citation issued the 1st day of Oct., 1889, to wife of Bat. Vaughan, witness for plaintiff. Served the above the 1st day of Oct., 1889. Signed D. P. Gayle, P. C.

Exception.

2d Justice Court, East Baton Rouge, Louisiana.

E. M. BURNETT
vs.
LOUISVILLE, N. O. AND T. R. R. Co. } No. 315.

In this case now comes The Louisville, New Orleans and Texas Railway Company, made parties defendants herein, and before answering plaintiff's petition excepts to the jurisdiction of your honorable court for this, to wit:

That defendant has its domicil for the State of Louisiana in the city of New Orleans without the limits of the jurisdiction of your honorable court and cannot be held to
5 answer any demand made against it before a justice of the peace not having jurisdiction within the limits of said city

of New Orleans; that act number seven (7) of the General Assembly of the State of Louisiana for the year 1888, under the provisions of which this suit is brought before your honorable court, is unconstitutional, null, and void for this, to wit, that it is violation of article fourteen (14) of the Constitution of the United States, in that it denies to defendant and all other corporations the equal protection of the laws of the State of Louisiana, making as it does an unjust and uneven distinction between corporations and natural persons is to tribunals before which they may be sued; that said act No. 7 of 1888 is violation of article forty-six (46) of the constitution of the State of Louisiana, in that it is a special law regulating the jurisdiction of the court of justice of the peace, to the injury of defendant and all other corporations.

Wherefore defendants pray that said act No. 17 of 1888 be
6 decreed to be unconstitutional and void, inoperative, and of no effect, and that defendant be hence dismissed, and for costs and general relief.

(S'g'd) By attorney, T. J. KERNAN.

Filed Sept. 27th, 1889.

I hereby certify the within to be a true copy of 2d justice court record.

(Signed) LEVI KELLUM, *J. P.*

(Endorsed:) "No. 315." 2d justice court, East Baton Rouge. E. M. Burnett *vs.* L., N. O. and T. R. R. Co. Exception to jurisdiction. Filed 27th Sept., 1889. (Signed) T. J. Kernan, att'y for def'd't.

Judgment on Exception and Answer.

Exception to jurisdiction was this day regularly taken up and submitted and overruled; whereupon defendant reserved all right under said exception and pleads general denial and prays hence to be dismissed and for costs.

7 *Judgment of Justice Court.*

This case was taken up and, after hearing evidence, judgment was rendered as follows, to wit: By reason of the evidence being in favor of plaintiff, E. M. Burnett, and against the defendant, The Louisville, New Orleans and Texas Railroad Co., by reason thereof, it is ordered, adjudged, and decreed that said plaintiff have judgment against the defendant company for the sum of seventy-five dollars and five (5) cents, — interest thereon from Sept. 2d, A. D. 1889, till paid, and that defendant pay all costs.

Done, read, signed in open court this 4th day of October, 1889.

(Signed) LEVI KELLUM, *J. P.*

Witness sworn for plaintiff: Dan. Contini, August Jones, and E. M. Burnett.

Order of Appeal.

Whereupon defendant company moved for a suspensive appeal, returnable before the honl. 17th jud'l dist. court at its session
8 — October, which was granted by the court, and plaintiff take- cognizance of said appeal and waives citation and all formalities.

Oct. 4th, 1889.

(Signed) LEVI KELLUM, *J. P.*

Bill of costs $4 37
Copy 3 00

Paid by T. J. Kernan, att'y.

Certificate of Justice of the Peace.

I hereby certify the within to be a true copy of 2d justice court record.

October 8th, 1889.

(Signed) LEVI KELLUM, *J. P.*

(Endorsed:) No. 1413. E. M. Burnett *vs.* L., N. O. — T. R. R. Co. Transcript for 2d justice court. Filed Oct. 9th, 1889. (S'g'd) J. T. Young, clerk.

Suspensive Appeal Bond.

E. M. BURNETT
vs.
L., N. O. — T. R. R. Co. } No. 315.

9 STATE OF LOUISIANA,
Parish of East Baton Rouge.

2d Justice Court.

(*Appeal Bond.*)

The Louisville, New Orleans and Texas R. R. Co., as principals, and T. J. Kernan, as surety, are held and firmly bound unto E. M. Burnett and his successors and assigns and legal representatives in the sum of one hundred and twelve $\frac{30}{100}$ dollars, lawful current money of the United States of America, dated and signed at Baton Rouge this 5th day of October, A. D. 1889; for the payment whereof we bind ourselves as follows, to wit: Whereas the above-bounden principal has asked for and obtained an order of appeal from the final judgment rendered against it in the suit of E. M. Burnett *vs.* The Louisville, New Orleans and Texas Railway Company, No. 315 of the docket of said court, returnable before the honorable 17th district court at its next regular term in October, 1889, at the city of Baton Rouge: Now, the conditions of this obligation is such

that if the above-bounden principal shall prosecute its sus-
10 pensive appeal with effect and shall satisfy whatever judg-
ment, costs, and damages may be rendered against it on appeal, or the same shall be satisfied by the proceeds of the sale of its estate, if it be cast in the appeal, otherwise the said surety shall be liable in its place.

THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,
Pp. T. J. KERNAN, *Att'y*, AND
T. J. KERNAN, *Surety*.

I hereby certify the above to be a true copy of the record of 2d justice court.

(Signed) LEVI KELLUM, *J. P.*

Oct. 8th, 1889.

Endorsed: No. 315. 2d justice court, East Baton Rouge. E. M. Burnett *vs.* L., N. O. & T. R. R. Co. Copy of suspensive appeal bond. Filed Oct., 1889.

Bill of Exception.

2d Justice Court, East Baton Rouge, La.

E. M. BURNETT
vs.
L., N. O. AND T. R'Y Co. } No. —

On appeal for trial *de novo* to the 17th district court for said parish.

11 Be it known that on the trial hereof, defendant having admitted the killing of the cow, the value of which is sued for, and plaintiff having proved value, plaintiff closed; whereupon defendant moved the court for a nonsuit for the reason that act No. 70 of the General Assembly of the State of Louisiana for the year 1886, making such proof sufficient to authorize a recovery by plaintiff, is unconstitutional, null, and void for this, to wit:

1st. That it is violation of article 46 of the constitution of the State of Louisiana, in that it is a special law changing the rules of evidence in judicial proceedings before the court, being limited in its operation to railroad companies only and making unjust discrimination against said companies in favor of other corporations and natural persons; 2d, that it is violation of article 14, section 2, of the Constitution of the United States of America, in that it denies the defendant and other railroad companies the equal protections of its laws, making as it does an onerous and unjust discrimination
against them in favor of other corporations and natural per-
12 sons. Whereupon the court overruled the motion; to which ruling defendant excepted, and, no further proof having been offered by plaintiff or defendant, judgment was rendered in favor of

plaintiff for the amount sued for, and defendant presents this his bill of exception for approval and signature.

(Signed) GEO. W. BUCKNER,
Judge 17th Jud. Dist. Court.

(Endorsed:) No. 1413. 17th district court, East Baton Rouge. E. M. Burnett *vs.* L., N. O. — T. R. R. Co. Bill of exception. Filed Feb. 10th, 1890. (S'g'd) J. T. Young, clerk.

Judgment.

17th Dist. Court.

BUR-ETT
vs.
L., N. O. & T. R. Co. } No. —.

Appeal from 2d magistrate's court.

This cause came up regularly for trial after previous assignment and the law, and, the evidence being in favor of plaintiff and against defendant, by reason thereof it is ordered that the judgment
13 appealed from be affirmed and that plaintiff, Ed. Burnett, have and recover judgment from the defendant, The Louisville, New Orleans and Texas Railway Company, in the sum of seventy-five dollars and five per cent. interest from judicial demand, & that defendant pay all costs of the lower and appellate court, and that this judgment be remanded to said justice court, 2d ward, East Baton Rouge, for execution.

Done, read, & signed in open court this 10th day of February, 1890.

(Signed) GEO. W. BUCKNER,
Judge 17th Jud. Dis. Court.

(Endorsed:) No. 1413. 17th dist. court. Burnett *vs.* L., N. O. and T. R. R. Co. Judgment.

Minutes of Court.

At a session of the honorable 17th judicial district court of the State of Louisiana, parish of East Baton Rouge, begun and holden at the court-house of said parish, on the 13th day of January,
14 being the second Monday of said month, in the year of our Lord one thousand eight hundred and ninety, A. D. 1890.

Present: His honor Judge Geo. W. Buckner.

MONDAY, *January 20th*, 1890.

The court met pursuant to adjournment.

E. M. BURNETT
vs.
L., N. O. AND T. R. R. Co. } No. 1413.

Assigned for Friday, 24th inst.

FRIDAY, *Jan. 24th*, 1890.

The court met pursuant to adjournment.

E. M. BURNETT
vs.
L., N. O. AND T. R. R. Co. } No. 1413.

This case was regularly taken up according to previous assignment and, after argument of counsel, was submitted to the court; whereupon it was ordered by the court that the judgment of the lower court be sustained.

15 MONDAY, *January 27th*, 1890.

The court met pursuant to adjournment.

E. M. BURNETT
vs.
L., N. O. AND T. R. R. Co. } No. 1413.

This cause came up regularly for trial after previous assignment, and the law and evidence being in favor of plaintiff & against defendant, by reason thereof it is ordered that the judgment appealed from be affirmed, and that plaintiff, Ed. Burnett, have and recover judgment from the defendant, The Louisville, New Orleans and Texas — Company, the sum of seventy-five dollars and five per cent. interest from judicial demand, and that defendant pay all costs of the lower and appellate court, and that this judgment be remanded to said justice court, 2d ward, East Baton Rouge, for execution.

STATE OF LOUISIANA,
PARISH OF EAST BATON ROUGE, CLERK'S OFFICE.

16 I, Joseph T. Young, clerk of the 17th judicial district court in and for said parish and State, do hereby certify the above and foregoing 15 pages, folio inclusive, contain a full and correct transcript of all documents filed, evidence adduced, and proceedings had in the suit entitled E. M. Burnett *vs.* Louisville, New Orleans and Texas Railway Company, and numbered 1413 of the civil docket of said court.

Given under my hand and seal of office, at Baton Rouge, this the 11th day of February, A. D. 1890.

{ Seal 17th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. }

J. T. YOUNG, *Clerk.*

17 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the seventeenth judicial district court of the State of Louisiana in and for the parish of East Baton Rouge, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said seventeenth judicial district court, before you, being the highest court of law or equity

of the said State in which a decision could be had in the said suit between Edward M. Burnett, as plaintiff, and The Louisville, New Orleans and Texas Railway Company, as defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
18 struction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Louisville, New Orleans & Texas Railway Company, defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 20th day of February, in the year of our Lord one thousand eight hundred and ninety.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by—
GEORGE W. BUCKNER,
Judge 17th Jud. Dis. Court.

19 [Endorsed:] No. 1413. 17th judicial dist. court, parish of East Baton Rouge. Edward M. Burnett *versus* Louisville, New Orleans & Texas R'y Co. Original writ of error.

20 Know all men by these presents that we, The Louisville, New Orleans & Texas Railway Company, as principal, —— ——, as sure-, are held and firmly bound unto Edward M. Burnett in the full and just sum of five hundred dollars, to be paid to the said Edward M. Burnett, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind

ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of March, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the 17th judicial district court holding sessions in and for the parish of East Baton Rouge, in a suit depending in said 17th judicial district court, wherein Edward M. Burnett is plaintiff and The Louisville, New Orleans & Texas R'y Co. is defendant, judgment was rendered against The Louisville, New Orleans & Texas R'y Co., defendant, and the said Louisville, N. O. & Texas R'y Co. having obtained a writ of error and filed a copy thereof in the clerk's office of the said 17th judicial district court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward M. Burnet, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Louisville, New Orleans & Texas Railway Co. shall prosecute its writ to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY CO., [L. S.]
Pp. T. J. KERNAN, *Att'y.* [L. S.]
(Signed) T. J. KERNAN, *Surety.* [L. S.]

Approved:

(Signed) GEO. W. BUCKNER,
Judge 17th Jud'l District.

A true copy.

21 [Endorsed:] No. 1413. 17th judicial district court, parish of East Baton Rouge. Edward M. Burnett *vs.* Louisville New Orleans & Texas Railway Company. Bond for writ of error. Filed M'ch 10th, 1890. (Signed) J. T. Young, clerk.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

Personally appeared Thomas J. Kernan, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of Baton Rouge, parish of East Baton Rouge, Louisiana, and is worth the full sum of five thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) T. J. KERNAN.

Subscribed and sworn before me this 10th day of March, 1890.

{ Seal 17th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. }

(Signed) J. T. YOUNG,
Clerk of 17th Judicial District Court of Louisiana for the Parish of East Baton Rouge.

CLERK'S OFFICE, EAST BATON ROUGE.

I hereby certify the above & foregoing is a true copy of the original on file in this office this March 10th, 1890.

{ Seal 17th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. }

J. T. YOUNG,
Clerk 17th Dist. Court.

22 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

The President of the United States to Edward M. Burnett, parish of East Baton Rouge, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the seventeenth judicial district court for the parish of East Baton Rouge, in the State of Louisiana, wherein Edward M. Burnett is plaintiff and The Louisville, New Orleans & Texas Railway Company is defendant, to show cause, if any there be, why the judgment rendered against the said Louisville, New Orleans & Texas Railway Company, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 10th day of March, in the year of our Lord one thousand eight hundred and ninety.

GEO. W. BUCKNER,
Judge 17 Jud. Dis. Court.

23 [Endorsed:] 17th jud. dist. court, parish of East Baton Rouge. No. 1413. Edward M. Burnett *vs.* Louisville, N. O. & Texas R'y Co. Citation.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

Personally appeared before me, the undersigned authority, Thomas J. Kernan, who, being sworn, says that he served the duplicate origi-

nal of this citation on Edward M. Burnett in person this March 10th, 1890.

T. J. KERNAN.

Sworn to & subscribed before me this March 10th, 1890.

{ Seal 17th Judicial District Court, Parish of East Baton Rouge, State of Louisiana. }

T. J. YOUNG,
Clerk 17 Dis. Court.

Endorsed on cover: Case No. 13,998. Louisiana 17th judicial dist. court, East Baton Rouge parish. No. 88. The Louisville, New Orleans and Texas Railway Company, plaintiff in error, *vs.* Edward M. Burnett. Filed March 22, 1890.